

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

THOMAS L. CLELLAND,)	
)	
Plaintiff,)	
v.)	
)	No. 06-5042-CV-SW-FJG
CUNNINGHAM SANDBLASTING AND)	
PAINTING, INC., et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is plaintiff's Motion for Execution of Process Service (Doc. No. 7). Plaintiff requests an order directing the U.S. Marshall Service to "execute process service." As it is apparent from the record that all named defendants have executed a waiver of service of process (see Doc. Nos. 11, 16, and 18), plaintiff's Motion for Execution of Process Service (Doc. No. 7) is **DENIED AS MOOT**.

Furthermore, all defendants request to be allowed to file an answer or Rule 12 motion by August 8, 2006.¹ (See Doc. Nos. 11, 16, and 18). For good cause shown,

¹Defendants state that they believe service upon them was technically defective, but that they agree with Rule 4(d)'s goal of avoiding unnecessary service costs and are thus willing to waive service of process. Waiver of service of process triggers a 60 day deadline for responding to a complaint. See Rule 4(d) of the Federal Rules of Civil Procedure. August 8, 2006 is slightly less time than the 60 days provided for in the Federal Rules.

Plaintiff has filed a "Response to Defendant's Caldwell Tanks Inc. Wavier [sic] of Service and Suggestions" (Doc. No. 19), stating that defendants should be required to file an answer on or before July 5, 2006 (and further suggesting that defendants would not be successful on any Rule 12 motions). The Court initially notes that it cannot prohibit defendants from filing Rule 12 motions in this matter. Further, even if plaintiff had properly served defendants making their responses due on July 5, 2006, the Court would be inclined to grant defendants an extension of time to file their answers and/or

defendants' requests are **GRANTED**. Defendants shall answer or otherwise respond to plaintiff's complaint on or before August 8, 2006.

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this order via regular and certified mail to plaintiff at the following address:

Thomas L. Clelland
403 E. 20th St.
Pittsburg, Kansas 66762

IT IS SO ORDERED.

Date: July 11, 2006
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge

Rule 12 motions as such request was made before the deadline plaintiff believes applies here.